

**MEMORANDUM**

September 18, 2013

TO: Planning, Housing, and Economic Development Committee

FROM: Jeff Zyontz, Legislative Attorney

SUBJECT: ZTA 13-04, Zoning Ordinance – Revised and District Map Amendment G-956  
Worksession #10 – Wrap-up, including any outstanding implementation issues

The future PHED Committee schedule is as follows:

September 27: Wrap-up, continued if required

Future Council schedule:

October 11: Complete PHED recommended text and map online and notice of November 12 public hearing

November 12: Public hearing on PHED text and map recommendations

January: First Council worksession

The Committee's directions for Staff from the September 17 worksession (only changes to the proposed draft are noted) are as follows:

- 1) In section 8.3.1 concerning conditional uses, add a need requirement for the same uses that currently require a finding of need.
- 2) In Section 8.5, delete the requirement for application notice in every application where a hearing notice is required.
- 3) In Section 8.7, edit grandfathering provision to cite "vacant or improved with a residential use" rather than residential zones, and add non-conforming use provision from the Planning Board Draft concerning change of use, abandonment, and reconstruction.
- 4) Amend the sign provision light standards to limit such that sign illumination does not result in more than .5 footcandles at the property line (staff would recommend qualifying which property line this limit applies to – staff recommends that the limit apply to "a property line if the abutting property is improved with a residential use").

The following items will be decided at the Committee's September 27 worksession:

- 1) In Section 8.3.1, edit text concerning inherent and non-inherent effects for the Committee's review.

Delete 8.3.1.E.5. and replace 8.3.5.E.1.g. with:

"will not cause undue harm to the neighborhood by virtue of a non-inherent adverse effect alone or the combination of an inherent and a non-inherent adverse effect in the following categories:"

- 2) Have DOT respond to the Planning Staff's redraft of parking minimums (no minimums in the Parking Lot Districts but required minimums elsewhere).
- 3) Review alternatives to Staff's September 17 recommended floating zone criteria.
- 4) Provide a means for hospitals to exceed .5 FAR in residential zones.

Add to conditional use standards for hospitals:

"h. Notwithstanding the maximum FAR requirements for general buildings in Sec. 4.4.4 through Sec. 4.4.15, Sec. 4.6.4, Sec. 4.6.5 or Sec. 4.7.4, the maximum FAR for Hospitals is established by the Conditional Use Approval."

- 5) Revisit the Staff proposed provision for places of worship in the AR zone to determine if it is covered by the proposed grandfathering provision and is not over broad.

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***What are the results from Staff's evaluation of cost per benefit point for CR and CRT zones?***

A memorandum from Mr. Sesker is attached. It is a complicated question. As thoughtful as Mr. Sesker's paper is, the Committee may not have all the answers it may want with absolute certitude.<sup>1</sup> Public benefits are not expressed as X square feet of specific benefit for Y square feet of gross floor area. Mr. Sesker will present his findings based on approved sketch plans to date.

When dealing with the CRT and CRN zone amendments (ZTA 11-01), the Committee (2-1, with Councilmember Floreen dissenting) recommended deleting all public benefit points for:

- through-block connections
- advanced dedication of master plan right-of-way
- way-finding
- adaptive building
- live/work units
- energy conservation
- energy generation
- vegetated wall

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<sup>1</sup> "If all economists were laid end to end, they would not reach a conclusion." George Bernard Shaw.

- tree canopy
- vegetated area
- vegetated roof
- cool roof
- recycling facility plan
- habitat preservation/restoration

In the opinion of the Committee majority, these benefits can be achieved through requirements rather than as an option. The Council rejected the recommendation to delete these benefits. A comparison table detailing current benefit public point maximums, the points recommended in ZTA 13-04, and the points previously recommended by the Committee and rejected by the Council is attached.

***How has Planning Staff interpreted ambiguity in master plans for the purpose of recommending an appropriate height?***

A resident believes that the Committee's recommendation to zone to the height and density recommended in a master plan was not followed for the C-O zone in the Westbard Sector Plan Area. The master plan is silent on the height for C-O zoning, but states that the optional method is unsuitable. There is no standard versus optional method development for the C-O zone.

The C-O zone allows 97 feet in height (with a site plan) unless the master plan says height above 42 feet is unsuitable. The zoning text does not indicate standard versus optional method, but it allows a height greater than 42 feet unless the master plan or sector plan prohibits a height taller than 42 feet. There is a table in the Westbard plan that "describes" C-O zoning as being 42 feet; it does not say it is the recommended height. In view of the lack of a specific prohibition on building taller than 42 feet and the lack of an "optional method of development" in the C-O zone, Planning Staff used the maximum height of the C-O zone. There is an 11 story building that pre-dated the Westbard Plan on C-O zoned property. (See the next question.)

Staff recommends a 42-foot height limit in the C-O zone in Westbard and any similar situations.

***In setting heights and density to the approved master plan, did the Committee intend to make the allowable height for existing buildings lower than their existing height?***

Staff is aware of a number of instances where existing buildings are taller than the master plan recommended height. The grandfathering provision would allow these buildings to be reconstructed if damaged beyond repair by forces outside of the control of the owner. If the owner voluntarily demolished the building, the owner would be subject to the new height limits. Building owners would like the zoning to reflect their building's current height.

Staff does not have a problem with master plan height limits combined with the grandfathering provisions.

***Is the height in the C-1 zoning conversion to 45 feet overly generous?***

The C-1 zone allows a height of 45 feet along any side of a property, as long as the average height is 30 feet. The compatibility standards in the draft would require the height of the building along the property abutting the R-60 zone to be 35 feet and only increase 1 foot in height for every additional foot of setback – up to 45 feet. Planning Staff discussed this conversion philosophy with the Committee – because the C-1 did allow a 45 foot height under certain circumstances, a majority of the Committee was satisfied with the change to 45 feet given that the proposed compatibility standards apply to all non-residential zones. The change from 35 feet, and CRN to NR with a height of 45 feet, was made by the Planning Board and was part of the District Map Amendment sent to Council on May 2, 2013.

***Is the I-4 zoning being appropriately translated to the IL zone?***

Testimony suggested that I-4 zoning is being inappropriately translated to the IL zone, particularly around the Airpark. Testimony suggests that the new IL zone deviates dramatically from what was originally intended for the I-4 zone by the Gaithersburg & Vicinity Master Plan. That master plan recommended locating the I-4 zone in areas where development is adversely affected by noise and other ambient and environmental factors. In the opinion of one property owner, the intent of the IL zone is the exact opposite of the intent of the I-4 zone. The particular claim in testimony was that a zone designed for 10-acre lots was inappropriately applied to 1-acre lots in the case of Mid-Atlantic on Snouffer School Road.

Planning Staff should satisfy the Committee that the IL zone is appropriate for formerly I-4 zoned property.

***Should a property in the Darnestown Rural Village Overlay zone that was recommended for the Country Inn zone in the Potomac Master Plan be rezoned to the same zone as surrounding C-1 properties (CRN .25 C .25 R 0 H 35)?***

The Afkhami property in the Darnestown Village Overlay zone is zoned RE-2, with the C-1 zoned property on its northern and western boundary. It was recommended for the Country Inn Zone in the Potomac Master Plan. The Zoning Rewrite would remove the possibility of the Country Inn zone. Testimony from the property owner's representative requested a re-zoning to the same zone used for the C-1 property. The testimony asserts that the Master Plan intended commercial development for the property.

Staff believes that this request is a local map amendment request and should not be approved as a District Map Amendment.

***Should zoning change along Old Georgetown Road?***

A special exception applicant abutting Old Georgetown Road wanted a zoning change.

Staff believes that this request is a local map amendment request and should not be approved as a District Map Amendment.

Planning Staff recommended zoning map corrections:

**Bethesda Center Development** (Tax ID#s 07-00420704, 07-00552638, 07-00416405, 07-00551257, 07-00419977, 07-00551246, and 07-00419966)

Current: CBD-2  
Proposed: CR 5.0 C 3.0 R 4.5 H 145 T  
Revised: CR5.0 C5.0 R4.5 H145 T  
Reason: approved for hotel with retail and allowed to develop to non-residential FAR of 5.0 under 59-C-6.234(b)(ii)(B).

**Rock Spring Park IBM Site** (Master Plan ID #9)

Current: I-3  
Proposed: EOF 0.75 H 100  
Revised: EOF 1.0 H 100 T  
Reason: approved by site plan 819890490 and allowed to develop to 0.85 FAR under 59-C-5.438(c); allowed density up to C0.6 and R based on trips equal to C0.5 under 59-C-5.4392(b)(1)(A) & (B); and allowed current residential bonus under 59-C-5.4392(b)(1)(C).

**Rock Spring Center** (Master Plan ID #21)

Current: MXPDP  
Proposed: CR 1.25 C 0.5 R 0.75 H 275 T  
Revised: CR 1.25 C 0.75 R 0.75 H 275 T  
Reason: reflect approved development approvals including institutional uses within nonresidential cap under 59-C-7.54.

**Rock Spring Center Camalier & Chaplain Site** (Master Plan ID #s 5, 7, & 12)

Current: I-3  
Proposed: EOF0.75 H100  
Revised: EOF1.0 H100 T  
Reason: approved by site plan 819900270 and allowed to develop to 0.85 FAR under 59-C-5.438(c); allowed density up to C0.6 and R based on trips equal to C0.5 under 59-C-5.4392(b)(1)(A) & (B); and allowed current residential bonus under 59-C-5.4392(b)(1)(C).

**Fortune Park**

Current: I-3  
Proposed: EOF0.75 H100  
Revised: CRT1.25 C0.5 R0.75 H100 T  
Reason: approved optional method development with density recommended in master plan (0.39 non-residential, 600 units); allowed density up to C0.6 and R based on trips equal to C0.5 under 59-C-5.4392(b)(1)(A) & (B); and allowed current residential bonus under 59-C-5.4392(b)(1)(C).

This Packet Contains

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Memorandum from Jacob Sesker  
Public benefit point comparison

A – 19  
20 – 21

## MEMORANDUM

September 18, 2013

TO: Planning, Housing, and Economic Development Committee

FROM: Jacob Sesker, Senior Legislative Analyst 

SUBJECT: CR Zones—Economic Issues

On June 28, 2013, the PHED Committee requested an analysis of the cost per incentive density point in the CR zone. This memorandum describes several issues related to calculating the “cost” of incentive density. This memorandum also summarizes the limited empirical evidence from sketch plans already approved and draws preliminary conclusions.

Also attached to this memorandum is a written response from Planning Department Staff, highlighting some potential problems with an economic analysis of incentive zoning.

### Background

Incentive or negotiated density programs necessarily implicate a weighting of the value of public benefits and the relative private cost (and benefit) of providing those public benefits. In the case of the CR zones, each of the public benefit provisions in 59-C-15.85 (Individual public benefit descriptions and criteria for CR zones) includes a specific maximum<sup>1</sup> point total that can be awarded by the Planning Board<sup>2</sup> based on a legislative weighting of the value of those public benefits. An alternative approach would have been to weigh the value of public benefits relative to the cost of providing that public benefit as part of a private development project.

### Issues

Under the current CR zone approach, developers propose a sketch plan that achieves at least the required number of incentive density points by including public benefits that make sense for their

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<sup>1</sup>For example, 59-C-15.855 (d), “Public Art: Up to 15 points for installing public art reviewed for comment by, or paying a fee accepted by, the Arts and Humanities Council.”

<sup>2</sup> Planning Board approved “Incentive Density Implementation Guidelines” set forth the guidelines for the Planning Board’s determining what incentive density to assign within the Council’s approved range.

specific project. Which public benefits make sense for any specific project is a function largely of “cost.” The challenges of analyzing the costs of providing the public benefits include the following:

**The economics of incentive density differ across land uses (e.g., residential, retail, office, hotel), structure types (e.g., low-rise, mid-rise, high-rise), and locations (e.g., down county, up county).**

**For example:**

- Costs and benefits of specific public benefit categories would differ across land uses. Public art, for example, might enhance rents for an office development while not enhancing rents for a residential project. On the other hand, public parking can be easily integrated into some non-residential developments, but would be more difficult to integrate into a residential only project and might even decrease achievable rents in the building.
- Affordable housing is less costly in low-rise buildings and in up county and east county locations, where the difference between MPDU rents and market rents is smaller.

**Some public benefits are costly, but do not add any incremental cost to the project. For example:**

- Structured parking (above or below grade) can be extraordinarily expensive. However, there is no incremental cost of structured parking for projects that, due to land values and project constraints, would include structured parking with or without the incentive density.<sup>3</sup>
- Through-block connections are a common amenity in large mixed-use developments. Such connections help to create an inviting, pedestrian-friendly environment and increase retail street frontage. The through-block connection in Bethesda Row is one of the most notable amenities in that successful development, for example. Similar projects in other locations might include a through-block connection even in the absence of incentive density—in fact, the through-block connection in Bethesda Row was included as a project amenity outside of any incentive or negotiated density process.

**Similarly, some public benefits add cost, but add NO incremental cost to specific projects because the public benefit is also an amenity that aids in marketing the project. For example:**

- Constructing a vegetated roof with a minimum soil depth of at least 4 inches covering at least 33% of the roof adds cost to the building’s construction, but may add no incremental cost to a LEED platinum office building, where the project includes green features in response to market forces or the desires of a specific single-tenant user.
- Providing a mix of dwelling unit sizes would add cost to the project if the changed mix in dwelling unit sizes negatively affected the absorption rate. However, providing this dwelling unit mix would not add cost to the project if demand existed for all dwelling units in the mix.

**Some public benefits add cost, but also generate operating revenue or reduce operating costs. For example:**

- Constructing public parking adds significant cost to a project. However, parking fees generate revenue for the project.
- Projects that conserve or generate energy may cost more to construct, but will enjoy lower operating costs after stabilization.
- Providing space for day care centers adds cost to a project, but that space generates revenue in the form of rent from the day care provider.

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<sup>3</sup> Four out of four sketch plans approved in White Flint have included incentive density in this category. In contrast, one out of three sketch plans approved in GSSC have included incentive density in this category.

**Some public benefits reduce cost, but may also reduce revenue. For example:**

- Providing parking at the minimum reduces development costs. However, reduced availability of parking may also affect revenue (for example, by placing downward pressure on achievable rents).

**Some public benefits impose opportunity costs on the land. For example:**

- Constructing a through-block connection reduces the amount of land that is available for development. In a smaller project, this opportunity cost might be significant, whereas in a larger project the through-block connection might be necessary.

**For some public benefits, the entire cost is already internal to the land value. For example:**

- Land that is close to metro is more expensive than land that is not close to metro. However, for an owner of land that is close to metro, there is no incremental cost of the public benefit points associated with transit proximity.
- Proximity to existing neighborhood services adds no cost to the project, though the convenience may be reflected in higher land acquisition costs.

As a result of the dynamics summarized above, it is difficult to precisely assess the cost of individual public benefit categories without assessing the development costs, operating revenues and operating costs of a project. In certain cases, it may even be necessary to analyze the land costs. A full pro forma analysis of the cost and value of incentive density points in each category for a set of hypothetical development projects with distinct land use mixes would be a complicated project requiring a significant amount of time and/or money.<sup>4</sup>

### Evidence

To date, every sketch plan approval has included more incentive density points than are necessary (more than 100 points).<sup>5</sup> **In fact, the average number of points per sketch plan approved (n=8) is 131.** Since there is no additional incentive density associated with points above 100, presumably there is also no cost associated with providing those public benefits.

There is a significant amount of geographic variation—the average number of points per sketch plan approved in White Flint (n=4) is 139, whereas the average number of points per sketch plan approved in GSSC (n=3) is 112.6. The one project approved in Wheaton received 156 points. Based on these small sample sizes, **one could conclude that, on average, at least 39 incentive density points awarded in White Flint involved no additional/incremental cost to the project, and that at least 12.6 incentive density points awarded in GSSC involved no additional/incremental cost to the project.**

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<sup>4</sup> Staff estimates that a pro forma analysis of the entire incentive density program using hypothetical development projects, if performed by a consultant, could cost \$80,000 or more, or require a substantial amount of Council Staff time over the next several months. Narrower questions could be resolved more quickly, with less disruption, and/or at a lower cost.

<sup>5</sup> The public benefits for which a project receives incentive density frequently differ from the public benefits originally proffered by the developer.



It is not surprising to see projects within the same market choosing a similar set of public benefit categories.

- Of the four sketch plans approved for projects in White Flint, on average 26.9 points were awarded out of the parking-related categories: minimum parking (average of 3.0 points), public parking (average of 6.9 points), and structured parking (average 16.9 points). Because land values in White Flint are so high, it is not surprising to see that developers sought parking-related incentive density.
- The four projects averaged 38.4 points for transit proximity (average of 30.9 points), and neighborhood services (average of 7.5 points); the cost of both of those public benefits is internal to the land cost.
- The four projects averaged 19.0 points for public benefits which would be a part of any large-scale mixed-use project, even in the absence of incentive or negotiated density: through-block connections<sup>6</sup> (average of 13.5 points), and public open space (average of 5.5 points).

Reviewing the above, it is reasonable to conclude that sketch plans in White Flint included on average 84 points which added no incremental cost, leaving an average of 55 points that were achieved using incentive density categories with associated incremental costs. Determining the cost to the developer of each of those 55 points would be a difficult task. Sketch plan approvals are very early in the process and the sketch plan applications do not contain all of the detailed information that might be necessary to analyze the cost of the incentive density points awarded.

It is, however, possible to draw preliminary conclusions on the basis of the sketch plans approved thus far. For example, none of the four White Flint sketch plans included incentive density points for affordable housing. In each case, the developer chose to pursue other incentive density categories (e.g., tree canopy, exceptional design, public art, public parking, parking at the minimum, presumably based upon an assessment that these incentive density categories were cheaper to achieve).

On the other hand, two of the three sketch plans approved in the Great Seneca Science Corridor proffered affordable housing above the minimum requirement. This could be because the options in this location were more limited, or simply because the difference between the value of market rate and affordable units is smaller in the GSSC market than it is in the White Flint market. Two approved sketch plans received incentive density for affordable housing—neither of those approved sketch plans received any incentive density related to parking.

### The City of Austin's Downtown Density Bonus

Another community that has recently implemented an incentive density program illustrates the amount of work necessary to analyze such a program. In 2009, the City of Austin set about establishing an incentive density program in its downtown. The menu of public benefits was much more limited than the menu in the CR zone—affordable housing (on-site or payment-in-lieu), green building, historic preservation in the warehouse district, live music venues and cultural uses, family-

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<sup>6</sup> Bethesda Row was a standard method project that included a through-block connection, even though no negotiation or proffer was necessary. In the case of one of the White Flint projects (North Bethesda Market II), the through-block connection actually connects to the through-block connection that was built as part of North Bethesda Market I, and would probably have been included in the absence of the incentive provision in the zone.

friendly residential (bonus density for units larger than 2 bedrooms), and child and elder care facilities. The economic analysis performed in 2009 included pro forma analyses for different land uses in each of the downtown districts examining the economics at different heights, with underground and above-ground parking, etc.

Recently, the City of Austin sought to recalibrate the incentive density program, with specific focus on the incentive density associated with payment-in-lieu of affordable housing. That analysis included a 10-page report and 139 pages of pro forma analysis. The methodology used in that analysis is similar to the methodology that Staff would use in order to recalibrate the incentive density weighting in the CR zone.

### Conclusion

A broad examination of the “cost per point” of each public benefit in 59-C-15.85 is not practical, and will require allocating substantial resources (staff time or consultant contracts).

Because many of the public benefits involve operating costs as well as capital costs, and many others affect operating revenues, pro forma analysis of example projects would be necessary. Those examples would need to reflect the variety of land uses, structure types, and geographies in which the CR zone has been or may be applied.

The sketch plans approved to date provide some evidence with respect to the economics of the CR zone public benefits in different geographic areas and different construction types. This evidence may highlight narrower questions, some of which could be further examined. However, the City of Austin’s 2013 recalibration study highlights that even answering a narrower question for a much smaller geographical area may require a fairly substantial effort in order to provide meaningful guidance.

### Attachments:

©	Item
1	Table
2	Problem of Evaluating Incentive Zoning Based on Economic Cost (Planning Department)

F:\Sesker\project files\CR Zone\092013 PHED CR Economics.doc

Project name

Master plan area

Zone

Gross Tract Area square feet

Approved residential square feet

Approved residential units

Approved commercial square feet

Approved FAR

Major Public Facilities

Transit Proximity

Connectivity between Uses, Active

Neighborhood Services

Minimum Parking

Through-block Connection

Public Parking

Transit Access Improvement

Trip Mitigation

Streetscape

Advanced Dedication

Wayfinding

Diversity of Uses and Activities

Affordable Housing

Adaptive Buildings

Care Centers

Small Business Opportunities

Dwelling Unit Mix

Enhanced Accessibility for the Disabled

Live-Work units

Quality of Building and Site Design

Historic Resource Protection

Structured Parking

Tower Step Back

Public Art

Public Open Space

Exceptional Design

Architectural Elevations

Protection and Enhancement of the

Building Lot Termination

Energy Conservation and General

Vegetated Wall

Tree Canopy

Vegetated Area

Vegetated Roof

Cool Roof

Recycling Facility Plan

Habitat Preservation and Restoration

Retained Buildings

## Project/Sketch Plan application

1	2	3	4	5	6	7	8
Mid Pike Plaza	North Bethesda Market II	North Bethesda Gateway	White Flint Mall	11141 Georgia Avenue	Hanover Shady Grove	Mallory Square	Camden Shady Grove
White Flint	White Flint	White Flint	White Flint	Wheaton	Great Seneca Science Corridor	Great Seneca Science Corridor	Great Seneca Science Corridor
CR3.0 C1.5 R2.5 H200 CR4.0 C3.5 R3.5 H300	CR3.0 C1.5 R2.5 H150 CR4.0 C3.5 R3.5 H300	CR3.0 C1.5 R2.5 H200 CR4.0 C3.5 R2.5 H250	CR3.0 C1.5 R2.5 H200 CR4.0 C3.5 R2.0 H250 CR1.5 C0.25 R1.5 H50	CR6.0 C5.5 R5.5 H200	CR1.5 C1.5 R1.5 H100	CR1.5 C1.5 R1.5 H100	CR2.0 C1.5 R1.5 H150
1,061,993	191,925	480,852	1,974,842	26,746	301,435	558,004	331,927
2,911,882 (max)	392,000 (max)	739,198 (max)	3,000,000 (max)	147,180 (max)	452,211 (max)	796,500 (max)	498,072 (max)
	414 units (max)		2,459 units proposed	194 units	366 units	682 units	
	368,000 (max) Any FAR above 348,528 must be accompanied by equal reduction in residential FAR						
1,716,246 (max)		961,043 (max)	2,500,000 (max)	840 (max)	n/a	3,500 (max)	5,000 (max)
3.0 FAR and 4.0 FAR (split zoned)	3.0 FAR and 4.0 FAR (split zoned)	3.0 FAR and 4.0 FAR (split zoned)	3.0 FAR, 4.0 FAR, and 1.5 FAR (split zoned)	6.0 FAR	1.5 FAR	1.5 FAR	1.5 FAR
Points awarded by the Planning Board at Sketch Plan							
			12.00		5.00	5.00	
33.09	36.00	30.64	24.00	50.00	20.00	20.00	30.00
10.00	10.00	10.00					
6.32	5.86			10.00			
10.00	15.00	15.00	14.00				
7.62	10.07		10.00				
							15.00
3.72			16.00				
	5.00		5.00				5.00
					13.92	13.60	
4.37							
15.00							
			20.00				
2.19					5.00		10.00
					6.55		6.00
14.32	18.03	16.25	19.00	18.00	10.00	9.90	10.00
1.53	5.00						
5.00	10.00		10.00			10.00	
	6.15	6.00	10.00		9.00	20.00	8.00
6.70	10.00	7.50	5.00		10.00	5.00	5.00
5.00	5.00	5.00	5.00	5.00	5.00	5.00	5.00
					15.00		
10.00	10.00				10.00	10.00	10.00
			5.00		5.00		8.00
4.48	10.00	10.00					
				4.00		5.00	8.00
				5.00			
				64.00			



Total Public Benefit Points

139.34

156.11

100.39

160.00

156.00

114.47

103.50

120.00

# The Problem of Evaluating Incentive Zoning Based on Economic Cost

## §1. Summary of Arguments against Establishing Economic Values for Public Benefits

### §1.1. Precedents

#### A. LEED

LEED ND establishes four categories to obtain points toward meeting certification: Smart Location and Linkage, Neighborhood Pattern and Design, Green Construction and Technology, and Innovation and Design Process. The first three categories require a project to meet particular prerequisites; all of the categories provide a menu of credit options with established points. Very few of the credits, with the possible exception of the Green Construction and Technology credits, can be quantified economically with any consistency from site to site. Instead, LEED ND is a program to “certify exemplary projects that perform well in terms of smart growth, new urbanism, and green building”.<sup>1</sup> In fact, many credits can provide short- and long-term savings for projects, while enhancing the tax base and local business revenues.

Projects that meet LEED ND certification would not always meet the point requirements for public benefits in the proposed zoning ordinance because of the numerous category requirements for design and diversity elements and master-plan conformance; many of the public benefits, however, are modeled on LEED ND and LEED ND credits.

#### B. Seattle

Amenities may be provided to gain floor area according to ratios and subject to limits. Downtown Zoning provisions<sup>2</sup>, for example, establish the following amenities: hillside terrace, urban plaza, commercial parcel park, residential parcel park, green street parcel park, public atrium, green street improvement, green street setback, hillclimb assist, shopping corridor, transit station access, public restroom, human services, and preservation of a landmark theater. Bonus ratios vary from 1:1 to 12:1 and are usually limited; some, such as hillclimb assist and transit station access, provide set maximum FAR gains (in these cases, 0.5 and 1.0, respectively); others have no limit.

Value may be roughly proportional to economic costs, but is not explicitly required in the code.<sup>3</sup> Affordable housing provision/payments and child care are generally required to meet maximum FAR, which may be up to 20.0; payment amounts for these amenities are established in the code – with allowances for adjustments based on the CPI. A LEED Silver rating is required for any

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<sup>1</sup> LEED for Neighborhood Development Rating System, Pilot Version, 2007, page 1.

<sup>2</sup> Seattle Municipal Code, Section 23.49.013, Bonus Floor Area amenities. Eligibility conditions and guidelines for amenity features are established by the Director in *Downtown Amenity Standards*, April 2011.

<sup>3</sup> The general philosophy on incentive zoning in Seattle is laid out in *Incentive Zoning in Seattle: Enhancing Livability and Housing Affordability*, Seattle Planning Commission, 2007.

building exceeding the base FAR; the total bonus FAR is reached by a combination of amenities, TDRs, and regional development credits.<sup>4</sup> Numerous uses are exempt from FAR calculations, including child care, live-work units, street-level retail sales & service in many places, and several other uses that also qualify as amenities.

### C. Chicago

There are 20 Public Benefit/Amenity options in the Chicago Zoning Ordinance with specified FAR bonuses; some are not limited.<sup>5</sup> The affordable housing bonus, for example, in Chicago is equal to 4 times the floor area provided for affordable housing; a payment may be made equal to 80% of the value of on square foot of buildable area multiplied by the bonus floor area taken based on an established rate.<sup>6</sup> Decision-making criteria are similar to the proposed Zoning Ordinance, relying on the code standards, purposes, and a *Guide to the Zoning Bonus Ordinance*. Many of the detailed standards and bonus formulas, however, are established in the Code.

To compare economics, which are never explicitly addressed in the Code, a couple examples may be helpful. A public plaza, for example, allows a density bonus equal to the area of the plaza divided by the lot area, which is then multiplied by the base FAR; this provides a straightforward cost. Many of their open space requirements follow a similar formula, but some do not. For example, an indoor through-block connection is valued at 66% of an outdoor plaza and an arcade is valued at 125% of an outdoor plaza; the costs for all three, however, may easily be the same. As another example, upper-level building setbacks provide significant bonus density  $[(0.3 \times \text{sum of setback areas on each floor}) / \text{lot area}]$ , but do not affect cost unless a height limit is reached. Finally, many design elements that most buildings would provide allow for bonus density, including structure parking and green roofs.

### D. New York

New York regulations are similar in many respects to Chicago's, the two being early examples of zoning ordinances with incentives for public amenities that have developed over decades. Like Chicago, density bonuses are provided for public plazas and arcades. The economics of the calculations, however, are more complicated because the bonus floor area for various open spaces vary not only between types of open space – which may be similar in cost – but by zone, sometimes providing 10 square feet of floor area per square foot of open space, sometimes 6, and sometimes 4, 3, or 2.

The range of density bonus for affordable housing is from 0.625 to 3.5 times the floor area provided as affordable housing depending on the zone, the type of affordable unit, and other factors. As in most codes, there is no minimum requirement equivalent to our 12.5% MPDU law that offers no bonus floor area.

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<sup>4</sup> Seattle Municipal Code, Section 23.49.011.A.2.

<sup>5</sup> Municipal Code of Chicago, Section 17-4-1002.

<sup>6</sup> See *City of Chicago's Affordable Housing Zoning Bonus Administrative Regulations and Procedures*, Department of Housing and Economic Development for details.

## **§1.2. Market Diversity (Space) and Fluctuations (Time)**

### **A. Market Diversity (Space)**

Without an unduly complicated system to ensure equivalence across the County, a cost-based system of public benefits is untenable. Like the existing CBD zones, which applied to disparate areas with widely divergent land costs and leasing rates, the C/R and Employment zones cover several areas. The cost to buy, develop, and maintain sites varies from area to area and a factoring system would have to be established by locality to ensure an open space or wayfinding signage system provides the same “bang for the buck” in Langley Park as in Wheaton as in Gaithersburg.

### **B. Market Fluctuations (Time)**

If the market diversity question were solved by relying on an indexed cost analysis or relying on developers to provide cost analyses for each site, the fact that costs change even over the time it takes to submit an application and obtain a building permit. What cost should be used, the cost at sketch plan? Site plan? Building permit? And is it fair to provide variable amounts of incentive density for the same amount of open space because a project was developed a year earlier or later?

## **§1.3. Economic Cost Does Not Always Correlate to Economic Value**

### **A. Economic Value**

Economic value is typically defined as the benefit that an actor (in our case, the public) can gain from a good or service. This can be interpreted relative to money, time, or another means of exchange. In the case of many public benefits provided through incentive zoning – with the notable exception of affordable housing, money is not usually the currency of exchange. Time may be provided via a through-block connection in a stretched interpretation, but, generally speaking, the value of a public benefit is determined by another means of exchange.

### **B. The Mechanism of Exchange**

Because value and price are linked through exchange, the question is what we are willing to pay and for what benefit? The amount we are willing to pay is the density we afford the developer – a direct financial incentive. The benefit we reap, however, cannot be evaluated financially because it is not a financial mechanism of exchange; the value we obtain is the enhanced quality of life, not by being paid in money or time.<sup>7</sup> To take it a step further, if the tax system is appropriately established, the increased revenue from the increased density should provide for the social and physical improvements necessary to support the density and enhance the community at large – the improvement to quality of life is the real “bonus” of the exchange.

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<sup>7</sup> Value in this setting is more sociological than economic, related to cultural, community, moral, and even aesthetic values. For a discussion on the intersection of planning and incorporating the values of a wider audience through advocacy, see Paul Davidoff’s work summarized in Allmendinger, Philip, “Planners as Advocates” in *Planning Theory*, Palgrave, 2002.

Put another way, the instrumental value is different on each side of the equation: simple profit to a developer, which allows them to move on to the next project and a more nebulous benefit to the user of the amenity, which may vary from person to person and time to time. A public park, for example is instrumental to several things: relaxation, recreation, social interaction, etc. It also has intrinsic ecological value. The values on the public's side of the equation are not easily quantified monetarily, so the prioritization of public benefits is more appropriate in a master plan – which outlines the vision that should implement a community's values – than in an economic formula.

#### **§1.4. Master Plan Priorities May Be Undermined**

##### **A. Master Plan Recommendations**

Eight master plans have made recommendations based on the public benefits in the code. The priorities outlined in each master plan are based on community input, facility needs, context, aspects of individual sites, and testimony from property owners.

<b>Master Plan</b>	<b>Public Benefit Recommendations</b>
Chevy Chase Lake	transit proximity, open space, major public facilities, affordable housing, small business opportunities, dwelling unit mix, public art, habitat preservation and restoration, tree canopy, and historic resource protection
Long Branch	historic resource protection, adaptive reuse, transit proximity, open space, recreation, tree canopy, renewable energy generation, energy conservation, small business opportunities, and the general categories of Connectivity, Diversity, and Quality Design
Takoma/Langley Crossroads	streetscape, through-block connections, small business opportunities, major public facilities (service center, civic green, recreation center, cycle track), care center, transit proximity, energy conservation, public art, public parking, traffic mitigation, MPDUs, open space, small business opportunities
Great Seneca Science Corridor	historic resource protection, adaptive reuse, Connectivity and Mobility, Diversity of Uses and Activities, major public facilities (public park, civic green, research library, LSC loop), energy conservation
Kensington	open space, tree canopy, vegetated area, energy conservation, transit proximity, recreation, streetscape, public parking, minimum parking
White Flint	open space, major public facilities (civic green, recreation center, library, service center), advanced dedication, tower step-back, open space, care center, energy conservation, tree canopy, green/cool roof, through-block connection, way-finding
White Oak Science Gateway	major public facilities (BRT, bus circulator, elementary school, parks and trails), transit proximity, trip mitigation, neighborhood services, streetscape, way-finding, affordable housing, dwelling unit mix, car center, structured parking, open space, energy conservation, energy generation, tree canopy
Burtonsville Crossroads	affordable housing, adaptive reuse, small business opportunities, open space, streetscape, energy conservation, green roof, energy generation, tree canopy, advance dedication, live/work

##### **B. Vision and Value**

As the table makes clear, each master plan area has prioritized a various set of public benefits in line with the vision of the various communities. These public benefits reflect the values inherent in the visions and provide a baseline for assessing regulatory applications. Most

properties or blocks have additional descriptions that fine-tune recommendations in concert with the design guidelines and public benefit implementation guidelines. In most cases, the project will have to provide benefits not on the priority list to fulfill their requirements; this allows flexibility and individuality to enhance distinct community character.

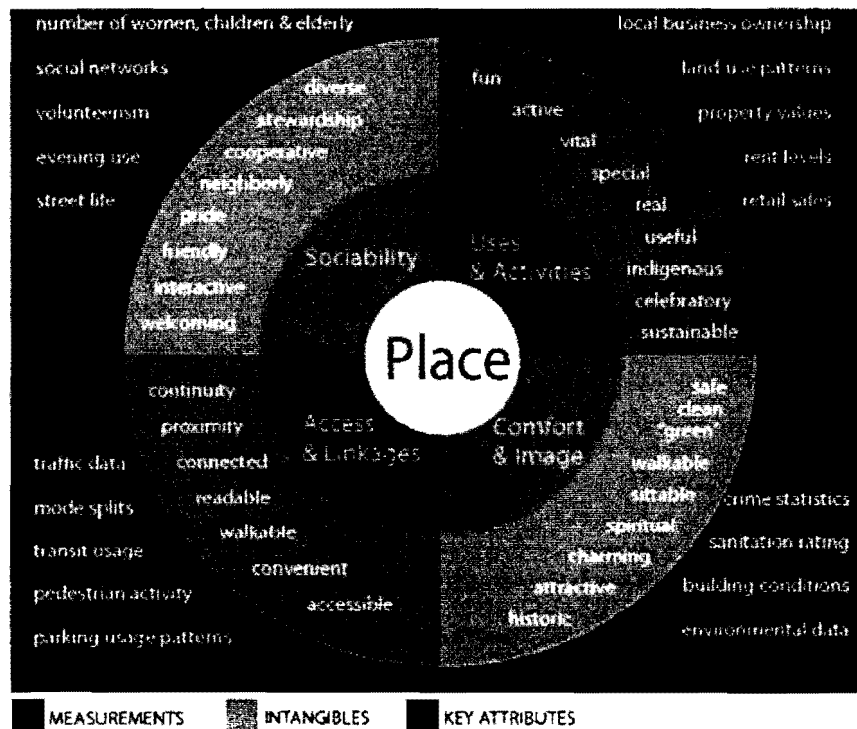
### §1.5. The Quality of the Environment is Not Based Entirely on the Cost of Building

#### A. Factors Contributing to Quality Built Environment

The Project for Public Spaces has developed a diagram outlining the four key qualities of successful public spaces around the world.<sup>8</sup> In sum the key qualities are:

- Accessibility,
- Active,
- Comfortable, and
- Sociable.

The attributes that go into these qualities are based on the uses, connections, amenities, densities, and design details in and around public spaces.



Many of these intangibles and measurements are supported by the public benefits in the proposed Zoning Ordinance. For example, pedestrian activity is supported by many of the Connectivity benefits, local business ownership and land use-patterns are supported by the

<sup>8</sup> "What Makes a Successful Place?", The Project for Public Spaces, [www.pps.org/reference/grplacefeat/](http://www.pps.org/reference/grplacefeat/).



Diversity benefits, environmental data and sanitation are supported by the Environmental benefits, comfort and image are supported by the Design benefits, etc.

**B. Cost versus Success of Place**

Pricing these qualities is obviously difficult, especial the whole ring of “intangibles”; valuing the attributes are next to impossible by monetary means (see above). Instead, this model shows how various types of measurements can be used to assess quality environments such as whether mode split goals are being met, whether the diversity of housing supports all ages and economic groups, whether property values are maintained and retail sales are improved, whether crime is decreasing while environmental quality is increasing. Each project should contribute to quality of place to support the success of each community; this success, however, is not based only an economic balance sheet.

**§1.6. Citizen Priorities May Be Undermined**

**A. Review Process**

Each optional method project is reviewed through a public process, including pre-application meetings with the community, public hearings, and numerous meetings and discussions. Many of the citizens notified and involved in the public review process were also involved in the master plan discussions that led to the master plan recommendations. In these cases, their input is an important benchmark used to assess an application. Many properties are designated zoning based on expectations that they will contribute to the success of the master plan vision in very particular ways. And the implementation of the master plan vision rarely involves a discussion of the financial terms of the negotiation. Staff and the Planning Board rely heavily on input from the community when making recommendations or decisions on every aspect of an application, including the points awarded for public benefits.

**B. Point Negotiation**

To this point, no application has been approved with the public benefit package submitted with the application. In each case both the individual public benefits and the points requested have changed through negotiations. These changes are based on master plan priorities, the findings required for approval, and community and agency input. An economic formula for evaluating public benefits would cause this negotiated process to become less useful and more like a checklist – the review process would, in a sense, become much more administrative denying the public, agencies, staff, and the Planning Board discretion to ensure master plan and community values are appraised higher than monetary values.

## **§2. Summary of Public Benefits – Their Goals, Precedents, Examples, and Notes**

### **§2.1. Major Public Facility**

#### **A. Goal**

- Conveyance of land and/or construction of public facilities where public land and/or funds are not available

#### **B. Precedents**

- CBD text amendments for Fillmore, police station, etc.
- Park upgrades & conveyance; recreation centers, etc. through master plan guidance
- ZTA for Bethesda police station

#### **C. Examples**

- Wisconsin Place Community Recreation Center
- 20,000sf out of 1,000,000sf total on 8 acres



#### **D. Notes**

- Flexibility needed for changing needs and unforeseen opportunities
- Master-planned public facilities remain priorities per conformance finding
- Only granted for improvements beyond applicable APF requirements
- Points awarded by conveyance, floor space, and build-out
- Costs for similar projects may vary considerably through time and from place to place; thus, equivalency cannot be established for economic value per square foot

### **§2.2. Transit Proximity**

#### **A. Goals**

- Encourage development near transit
- Reduce VMTs & encourage maximum use of existing infrastructure
- Encourage revitalization in areas that have lagged behind without need for financial incentives (e.g., tax incentives or public investment in Silver Spring)

#### **B. Precedents**

- LEED for Neighborhood Development Smart Location & Linkage Prerequisite 1: Smart Location
- HUD/EPA/DOT Sustainable Communities Program Strategy
- Synchs with PlanMaryland targeted growth and revitalization areas
- 32 states provide an incentive for proximity to transit in their tax credit programs

### C. Examples

- Points awarded for transit proximity for approved sketch plans (out of 100, which is proposed for revision to 125 points for large projects):

Application #	Name	Transit Proximity Points
320110010	Pike & Rose	33.09
320110020	North Bethesda Gateway	30.64
320110030	North Bethesda Market II	40.00
320120010	Mallory Square	20.00
320120020	Hanover Shady Grove	20.00
320120030	11141 Georgia Avenue	50.00
320120040	White Flint Mall Redevelopment	24.00
320120050	Camden Shady Grove	30.00
320130010 (pending)	Gables White Flint	30.47

### D. Notes

- Land near transit costs more, higher densities require more points
- Very few properties qualify for maximum points
- Incentives to build lead to economic benefits of Smart Growth<sup>9</sup>:
  - Higher Revenue Generation per Acre of Land
  - Infrastructure and Service Delivery Cost Savings
  - Redevelopment and Reuse Opportunities
  - Economic Productivity and Job Creation
  - Price Premiums
  - Economic Revitalization
  - Meeting Market Demand
  - Responding to Changing Demographics
  - Reducing Housing and Transportation Costs

## §2.3. Connectivity and Mobility

### A. Public Benefits

- Advance Dedication
- Minimum Parking
- Neighborhood Services
- Public Parking
- Through-Block Connection
- Transit Access or Streetscape Improvement
- Trip Mitigation
- Way Finding

<sup>9</sup> *Smart Growth and Economic Success: Benefits for Real Estate Developers, Investors, Businesses, and Local Governments*, EPA Office of Sustainable Communities, December 2012.

## B. Goals

- Encourage development where vehicle trips are not necessary to get to daily needs, housing, and jobs; decrease reliance on single-occupancy car trips
- Promote health, safety, transit use, multi-modal/alternative transportation, walking, and environmental protection
- Increase store frontage opportunities and access to local businesses
- Support “park-once” model, reduce surface parking/wasted land resources
- Minimize long street-walls and break up “super blocks”
- Encourage diversity of pedestrian spaces
- Replace function of PLD where land is unavailable or unaffordable for County-owned parking garages
- Reduce VMTs and pollution; exceed master plan mode share goals
- Encourage public cost savings and ensure staging requirements are met
- Promote local business, parks, & cultural institutions.
- Provide information on civic facilities and amenities.

## C. Precedents

- CA SB375 provides incentives for locating new development near transit & 10 basic services to minimize VMTs and maximize return for transit infrastructure investment.
- EPA’s Essential Smart Growth Fix #1: Encourage or require mixed uses.
- HUD/EPA/DOT Sustainable Communities Program Strategy: Enhance economic competitiveness. Improve economic competitiveness through reliable and timely access to employment centers, educational opportunities, services and other basic needs by workers as well as expanded business access to markets.
- LEED for Neighborhood Development Neighborhood Pattern & Design Credit 2: Diversity of Uses.
- LEED for Neighborhood Development Neighborhood Pattern & Design Credit 6: Reduced Parking Footprint.
- Numerous communities have removed minimum parking requirements (Ann Arbor, Boulder, Arlington’s Columbia Pike Code for sites under 20,000sf).
- EPA’s Essential Smart Growth Fix #4: Fix Parking Requirements (lower minimums, promote shared parking, provide on-street parking, etc). See also, EPA’s *Parking Spaces / Community Places: Finding the Balance Through Smart Growth Solutions*. February 2006
- ULI’s *Shared Parking*, 2<sup>nd</sup> ed.: Shared use case studies show requirement reductions of up to 43% depending on situation (without consideration of transit, mode-split goals, etc).
- ITE’s *Parking Generation*, 4<sup>th</sup> ed.: parking requirements are generally below current 59-E ratios (retail = 2.04-4.07 spaces per 1,000sf versus 5 spaces per 1,000sf in 59-E; office = 0.83-2.84 spaces per 1,000sf versus 1.9-3.0 spaces per 1,000sf in 59-E).
- LEED for Neighborhood Development Neighborhood Pattern & Design Credit 7: Walkable Streets & Credit 11: Access to Surrounding Vicinity.

- Popular in many places in North America and Europe for creating small business opportunities near pedestrian-focused spaces.
- Arlington's Columbia Pike shared parking requirement.
- Incentives for shared-parking are prevalent throughout North America, from Alexandria to Portland & Minneapolis to Temple City, CA.
- TMAg requirements for commercial development in established Transportation Management Districts (Silver Spring, North Bethesda, GSSC, etc.).
- LEED for Neighborhood Development Neighborhood Pattern & Design Credit 10: Transportation Demand Management.
- Portland's way-finding sponsorship program.
- Tourism projects in Augusta, Scottsdale, Seattle, Nashville, and numerous historic, cultural, or arts districts.

#### D. Examples

- Mid Pike Plaza was awarded 9.6% for providing less than maximum allowed parking.
  - Minimum = 2,401 spaces
  - Maximum = 6,559 spaces
  - Provided = 4,574 spaces
- Transit Access or Streetscape Improvement
  - Must be off-site and in addition to any upgrades required by regulation (e.g., PAMR improvements)
  - Could be used along stretches of sidewalk that are not ready for redevelopment
  - Contingent on availability of rights-of-way and/or easements
- Way Finding
  - Numerous cities are tying "livability" and "walkability" to legibility.
  - Branding, marketing, local business support, & tourism goals are being addressed by way-finding campaigns.



Livable cities are legible cities



#### E. Notes

- Many public benefits modified through CRT & CRN ZTA and proposed for further modification through rewrite process
- Parking model modified through cooperation with DOT and Chapter 60 rewrite
- Master-planned pedestrian connections in numerous master plans
- Internal block connections are important to retail success. The new application by JBG for their north block in White Flint utilizes this to define the design of the block, create public space, and maximize small storefront opportunities
- Way Finding implementation can be guided by works such as Gibson's *The Wayfinding Handbook*, Calori's *Signage and Wayfinding Design*, or Berger's *Wayfinding*.

- Many benefits per request of municipalities and urban districts – Silver Spring is an area under consideration for way-finding to assist local businesses
- Some recommended modifications in §3

## **§2.4. Diversity of Uses and Activities**

### **A. Public Benefits**

- Adaptive Buildings
- Care Centers
- Dwelling Unit Mix
- Enhanced Accessibility for the Disabled
- Enhanced Visitability for Seniors/Disabled
- Live/Work
- MPDUs
- Small Business Opportunity
- WFHUs

### **B. Goals**

- Provide housing for a diverse community.
- Ensure density benefit is balanced with economic burden.
- Provide points in excess of bonus under Chapter 25A.
- Create more sustainable buildings.
- Allow for shifts of use over time to adapt to market and demographic changes.
- Provide opportunities for care of diverse populations integrated into fabric of community.
- Address growing need for day care with increased single-parent households and dual-parent working households.
- Address changing demographics – aging population and increased demand for care.
- Provide convenient facilities that serve needs of families over time.
- Support small business.
- Increase diversity of ownership and services for community.
- Maintain and enhance character of urban areas.
- Provide the opportunity to allow residents to “age-in-place”.
- Support stability of neighborhood by providing a range of housing choices as household circumstances change.
- Meet an increased need for households looking to downsize.
- Encourage unit construction beyond basic accessibility/visitability requirements.
- Encourage local, small businesses.
- Increase diversity of uses in neighborhoods.
- Activate street life, pedestrian oriented communities, and safety.
- Reduce VMTs

### **C. Precedents**

- MPDU optional method and density bonus provisions in CBDs, cluster development, etc.

- Virtually every municipality with density incentive systems encourages affordable housing.
- HUD/EPA/DOT Sustainable Communities Program Strategy: promote equitable, affordable housing.
- LEED for Neighborhood Development Neighborhood Pattern & Design Credit 4: Affordable Rental Housing & Credit 5: Affordable For-Sale Housing.
- Density bonuses generally focused on adaptive re-use of buildings.
- Many benefits are focused on infill projects in cities; most common on the west coast.
- Density bonus for child care is required to be implemented by jurisdictions under California state law; see precedents in §1.
- LEED for Neighborhood Development Green Construction & Technology Credit 4: Building Reuse and Adaptive Reuse.
- Most small business programs are financially based (e.g., grants to small businesses, etc.).
- Small business opportunity provides space for businesses to take advantage of financial incentives and programs, which have numerous precedents.
- LEED for Neighborhood Development Neighborhood Pattern & Design Credit 3: Diversity of Housing Types.
- LEED for Neighborhood Development Neighborhood Pattern & Design Credit 3: Diversity of Housing Types.
- Live/work: Austin, Los Angeles, Toronto, Glendale, etc.
- APA's Smart Growth Code includes a model Live/Work ordinance.

#### D. Examples

- Two GSSC site plans have been approved with 13.5% MPDUs.
- Adaptive Buildings
  - Broadstreet, Richmond.
  - Pre-application meetings have begun for renovations of existing buildings with vacancies in Wheaton.
  - Typically office or industrial to residential/mixed-use in larger buildings, which is not allowed in most commercial zones currently.
  - Common conversion for underutilized Class B & C office buildings.
- Mid-Pike Plaza was granted 10% incentive density for provision of a care center for at least 12 users, of which at least 25% of the spaces are open to the general public.
- City of Pacifica's Housing Element provided density bonuses for affordable housing and housing units that meet the needs of the elderly or disabled.
- Live/Work
  - Westminster, CO.
  - Live-Work Studios: provides a developer with the opportunity to create several attached live-work homes for creative professionals.



Multi-family residential buildings designed to include art studios or commercial uses could add live & work opportunities.

- St. Louis: affordable housing with a large mix of handicapped-accessible units with live/work at grade occupied by an architect, custom paper shop owner, etc.

#### **E. Notes**

- Incentive density for WFHUs = 2 times the percentage of WFHUs provided, e.g., 5% WFHUs is awarded 10 points.
- Benefits can be set as a particular master plan area priority.
- Range of unit types provides range of housing costs.
- Enhanced accessibility & visitability are important given the increase in the senior population in Maryland – 85,000 new seniors by 2040.
- Range of benefits especially targeted to Kensington, Takoma, and similarly sized communities.

### **§2.5. Quality Building and Site Design**

#### **A. Public Benefits**

- Architectural Elevations
- Enhanced Recreation Facilities
- Exceptional Design
- Historic Resource Protection
- Public Art
- Public Open Space
- Structured Parking
- Tower Step-Back

#### **B. Goals**

- Protect & enhance historic resources & contributing elements.
- Encourage redevelopment & preservation of historic sites & districts.
- Minimize environmental impacts of parking.
- Create and maintain pedestrian oriented streets.
- Offset higher costs of structured parking.
- Maintain pedestrian-oriented street.
- Reduce wind impact at sidewalk grade.
- Tourism, marketing, & branding; interaction, education, & enrichment.
- Target open space to master planned priority areas.
- Rationalize open space system in urban & town centers.
- Provide a hierarchy of open spaces and parks.
- Minimize public costs for passive and active recreation areas.
- Establishment of sense of place & community identity through landmarks and civic pride.
- Enhancement of public realm and promotion of civic image.
- Synthesis of environmental, design, and economic objectives.
- Create unique street identity.
- Preserve & enhance neighborhood character.



- Ensure pedestrian-oriented street walls.

### C. Precedents

- Municipalities in most states have open space density bonuses.
- Open space requirement in all mixed use zones; "green" area requirement in most commercial zones.
- LEED for Neighborhood Development Neighborhood Pattern & Design Credit 9: Access to Civic and Public Spaces.
- Historic preservation provides general density bonus in most jurisdictions from Austin to NY and Missoula to Seattle.
- EPA Smart Growth objective.
- National Trust for Historic Preservation strategy for smart growth with a "top 10" list for LEED credits that incorporate historic resources, esp., LEED ND Green Infrastructure & Buildings Credit 6 - Historic Resource Preservation and Adaptive Use.
- LEED credits can be gained (minimizing site impact, decreasing parking capacity, etc.)
- Georgia, Utah, California, New York and many other states incentivize structured parking.
- Objective 3.2.2. of Maryland's *Driving Urban Environments: Smart Growth Parking Best Practices*.
- Incentive meets ULI's recognized financial hurdle that structured parking poses.
- Los Angeles, Concord, Phoenix, Austin, Wilmington, and others provide incentive for tower step-back (typically tied to height bonuses, which is similar to how the CR benefit works).
- Tower step-back recognized best practice since the early 1930s.
- Many cities have a % for art requirement; most have a built-in density bonus program if not required.
- MoCo's previous percent for art and budget for the Public Arts Trust.
- Many municipalities use design review boards to maintain, create, or enhance the quality of the built environment.
- Design review used as a density bonus in many cities.

### D. Examples

- Open Space
  - Wheaton Safeway made an \$850,000 amenity fund payment because the building was redesigned to meet urban streetscape standards.
  - The amenity fund cost would have been reduced under CR zoning, increasing the opportunity for other benefits, such as more affordable housing.
- Design Excellence/Review
  - Seattle's Ballard West.
  - Building with numerous environmental features granted "conditional" approval.



- Changes to east façade required to address design concerns.
- Historic Preservation
  - National Park Seminary District.
  - ULI Development Case Study Series.
  - Preservation and rehabilitation for diversity of unit types and density.
  - Montgomery County leads the state in commercial tax credit.



#### E. Notes

- Each year several thousand new structures in the County become eligible for historic designation.
- All sketch plans have included structured parking.
- Tower step-back increases building cost as structural supports are required to cut through lower floors.
- Open space should occur on sites where focused activities and respites can be created in a systematic, rather than ad-hoc, manner.
- The County is widely known for a lack of well-designed buildings. Where design is a priority, it is an economic driver and attracts investment.
- Architectural Elevations:
  - Requires that Board-imposed binding elements be followed, such as fenestration, door separation, awning, sign restrictions, etc.
  - Elevations do not have to simply be “provided” but “approved”.
  - New benefit – specifically focused on small towns & villages such as Takoma & Kensington.
  - Provides greater certainty early in the process and greater engagement by all parties; can expedite review times.

## §2.6. Protection and Enhancement of the Natural Environment

### A. Public Benefits

- BLTs
- Building Reuse
- Cool Roof
- Energy Conservation
- Energy Generation
- Habitat Preservation and Restoration
- Recycling Facility Plan
- TDRs
- Tree Canopy
- Vegetated Area

- Vegetated Roof
- Vegetated Wall

#### **B. Goals**

- Protect agricultural reserve.
- Maintain nexus between density in urban areas and preservation of agricultural land.
- Encourage sustainable land use practice and decrease sprawl.
- Environmental protection.
- Energy autonomy & security.
- Climate change mitigation.
- Economic self-sufficiency.
- Decrease heat-island effect, provide habitat, & encourage ESD micro-bioretenction.
- Sequestration of carbon.
- Mitigation of stormwater.
- Creation of habitat.
- Creation & enhancement of pedestrian comfort.
- Protect and expand natural habitat for native flora & fauna.
- Maintain and enhance open spaces for public enjoyment.
- Sustainable site planning & resource use.
- Integration of recycling facility in site design.
- Better compliance with executive regulations governing recycling facilities and decrease in site plan amendments that have to retrofit to install recycling facilities.

#### **C. Precedents**

- TDR & conservation programs.
- Conservation subdivision limits on density & requirements for open space preservation.
- HUD/EPA/DOT Sustainable Communities Program Strategy.
- Numerous LEED credits in Energy & Atmosphere category (new construction) & Green Infrastructure & Buildings category (neighborhood development).
- Austin, Seattle, Asheville, etc. provide energy incentives.
- Most municipalities provide density bonuses for LEED (this is more targeted).
- Sustainable Sites Initiative foci (LEED-like model site design system).
- Incentive programs in many cities incorporate green walls.
- Works with, but is not required by, ESD standards.
- Cities in Illinois, Hawaii, Texas, Oregon, California, etc. and many Canadian, Australian, & western European Cities.
- Recommended by EPA.
- Required in numerous local municipalities for Chesapeake Bay preservation.
- LEED for New Construction Sustainable Sites Credit 7.2: Heat Island Effect - Roof.
- LEED for Neighborhood Development Green Infrastructure & Buildings Credit 9 – Heat Island Reduction.

#### D. Examples

- Sihl City Green Wall in Zurich:
  - Cooler summer temperatures in summer.
  - Buffering & insulation during winter.
  - Decreased noise from autos.
  - Graffiti deterrent.
- Habitat Restoration
  - Numerous research projects have shown the social & economic benefits of habitat restoration on tourism.
  - For extreme cases, see *Diamond's Collapse*. Needed for numerous restoration projects unfunded for local streams and forests.
- Cool Roof
  - Cool Roof Rating Council.
  - Benefits of cool roofs include:
    - Energy savings and global warming mitigation
    - Reduction in urban heat island effect and smog
    - Improved occupant comfort
    - Comply with codes and green building programs



#### E. Notes

- Benefits are not mandated by County legislation.
- Especially important practice to mitigate parking and other impacts of urban environment.
- Benefits targeted to sites without ability to provide plantings or habitat on site and for small sites and lower densities.
- In addition to environmental buffer impact mitigation and tree afforestation requirements.

### §3. Recommended Modifications

#### §3.1. Connectivity and Mobility Benefits

- A. **Advance Dedication:** Up to 8 points in the LSC zone, 15 points in the EOF and CRT zones, and 30 points in the CR zone for platting or deeding a dedication or easement for dedication for master planned rights-of-way for a future phase of development before filing a site plan application.
- B. **Transit Access or Streetscape Improvement:** Up to 20 points for constructing new or improving existing off-site pedestrian improvements, excluding any streetscape improvements otherwise required.

- C. **Trip Mitigation:** Up to 15 points for entering into a binding Traffic Mitigation Agreement to reduce the number of weekday morning and evening peak hour trips attributable to the site in excess of any other regulatory requirement where 2 points are granted for every 1% of mitigated trips above the applicable master plan goal.

**§3.2. Diversity of Uses and Activities Benefits**

No new modifications.

**§3.3. Quality Building and Site Design**

No new modifications.

**§3.4. Protection and Enhancement of the Natural Environment**

No new modifications.

Changes in Public Benefit Points by Category	Current Code	Planning Board Draft	PHED Committee Recommendation 2016
<b>Major Public Facilities</b>			
LSC	n/a	20	n/a
EOF or CRT	40	40	40
CR	70	70	70
<b>Transit Proximity</b>			
LSC	n/a	0-10	n/a
EOF or CRT	7.5-25	0-25	0
CR	15-50	2.5-50	0
<b>Connectivity and Mobility</b>			
Advance Dedication			
LSC	n/a	8	n/a
EOF or CRT	30	15	0
CR	30	30	0
Minimum Parking	10	10	20
Neighborhood Services	15	10	10
Public Parking	25	25	20
Through-Block Connections	20	15	0
Transit Access or Streetscape Improvement	n/a	20 (combined)	n/a
Transit Access	20	n/a	5
Streetscape Improvement	20	n/a	10
Trip Mitigation	20	15	5
Way-Finding	10	5	0
<b>Diversity of Uses and Activities</b>			
Adaptive Buildings	15	10	0
Affordable Housing	40	40	40
Care Centers	20	20	15
Dwelling Unit Mix	10	10	5
Enhanced Accessibility for Seniors or the Disabled	20	15	10
Enhanced Visitability for Seniors or the Disabled	n/a	15 (new)	n/a
"Live/Work"	15	10	0
Small Business Opportunities	20	20	10
Workforce Housing	n/a	20 (new)	n/a
<b>Quality Building and Site Design</b>			
Architectural Elevations	20	20	0
Enhanced Recreation Facilities	n/a	10 (new)	n/a
Exceptional Design	10	10	10
Historic Resource Protection	20	20	15
Public Open Space	20	20	15

Public Art	15	15	10
Structured Parking	20	20	20
Tower Step-back	10	5	(included in Exceptional Design)
Protection and Enhancement of the Natural Environment			
Building Lot Termination	30	30	30
Building Reuse	100	100	100
Cool Roof	10	5	0
Energy Conservation and Generation	15	n/a (split)	0
Energy Conservation	n/a	10	n/a
Energy Generation	n/a	15	n/a
Habitat Preservation and Restoration	20	20	0
Recycling Facility Plan	10	5	0
Transferable Development rights	20	20	0
Tree Canopy	15	10	0
Vegetated Area	10	5	0
Vegetated Roof	15	10	0
Vegetated Wall	10	5	0

Transit Proximity Public Benefit – Current Code								
Proximity	Abutting or Confronting		Within ¼ mile		Between ¼ and ½ mile		Between ½ and 1 mile	
Transit Level	1	2	1	2	1	2	1	2
CRT	25	15	20	12.5	15	10	10	7.5
CR	50	30	40	25	30	20	20	15

Transit Proximity Public Benefit – Planning Board Draft												
Proximity	Abutting or Confronting			Within ¼ mile			Between ¼ and ½ mile			Between ½ and ¾ mile		
Transit Level	1	2	3	1	2	3	1	2	3	1	2	3
LSC	10	5	2.5	8	4	0	6	2	0	4	0	0
EOF or CRT	25	15	5	20	12.5	2.5	15	10	0	10	7.5	0
CR	50	30	10	40	25	5	30	20	5	20	15	2.5